

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KEVIN JOSEPH SMITH

Plaintiff,

v.

ELDON VAIL,

Defendant.

CASE NO. C10-5614 RJB/JRC

ORDER GRANTING A STAY OF  
DISCOVERY

This 42 U.S.C. § 1983 civil rights action has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and Local Magistrate Judge's Rules MJR 1, MJR3 and MJR4.

Defendant Eldon Vail, through counsel, asks the Court to stay discovery (ECF No. 11) while his Motion to Dismiss (ECF No. 10) is pending. The Motion to Dismiss is based on an adequate post-deprivation remedy; failure to allege personal participation; and, statute of limitations. The motion to stay discovery is GRANTED.

Pursuant to Fed. R. Civ. P. 26(b)(2)(C),

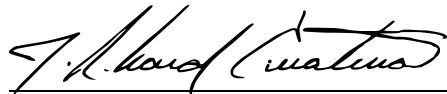
the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: . . . (iii) the burden or

1 expense of the proposed discovery outweighs its likely benefit, considering the  
2 needs of the case, the amount in controversy, the parties' resources, the  
3 importance of the issues at stake in the action, and the importance of the  
4 discovery in resolving the issues.

5 "Trial courts have broad discretion and inherent power to stay discovery until preliminary  
6 questions that may dispose of the case are determined". Hahn v. Star Bank, 190 F.3d 708, 719  
7 (6th Cir. 1999). In this case, plaintiff already has responded to the Motion to Dismiss (ECF No.  
8 12); therefore, plaintiff does not have any need to gather information in order to respond to the  
9 Motion. Therefore, discovery shall be stayed until the Court's resolution of Defendant's Motion  
10 to Dismiss.

11 The Clerk's Office is directed to send plaintiff a copy of this Order.

12 DATED this 12th day of November, 2010.

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15 J. Richard Creatura  
16 United States Magistrate Judge  
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